

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

6

7 CELSIUS NETWORK, LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 May 7, 2024

16 2:04 p.m.

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20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re Hybrid Hearing RE: Motion for Leave to File a  
2 Late Adversary Proceeding against Celsius Network LLC  
3 (Celsius) and its Affiliates Filed by Jason Voelker (Doc  
4 #4825, 4841, 4843, 4855, 4865)

5  
6 HEARING re Hybrid Hearing RE: Motion Requesting Judicial  
7 Review of a UCC Matter. (Doc #4464, 4701, 4764, 4797, 4806,  
8 4850, 4855)

9  
10 HEARING re Doc #4866 Motion to Allow/Motion for an Order  
11 Requiring the Post-Effective Debtors to Provide Discovery to  
12 Support Statements Made in Response to Issues Raised by  
13 Corporate Creditors for Inequitable Distribution under the  
14 Plan of Reorganization

15  
16 HEARING re Hybrid Hearing RE: Post-Effective Date Debtor's  
17 Motion Seeing Entry of an Order (I) Approving for the  
18 Distribution of Deceased Account Holder Assets to their  
19 Respective Authorized Representatives, (II) Authorizing such  
20 Distributions, and (III) Granting Related Relief (Doc #4815,  
21 4826, 4855)

22  
23  
24  
25 Transcribed by: Sonya Ledanski Hyde

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15 BY: JOSEPH MCNELIS

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17 UNITED STATES DEPARTMENT OF JUSTICE

18 Attorneys for the U.S. Trustee

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23 BY: BRIAN MASUMOTO

24

25

1 RICHARD PILLIPS

2 Pro Se

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4 JASON VOELKER

5 Pro Se

6

7 ALSO PRESENT:

8 KEITH NOYES

9 KIMBERLY ANNE HAVLIN

10 DAVID J. ADLER

11 CHRIS BECIN

12 MARLOWE P. BENNETT

13 JEFFREY BERNSTEIN

14 PAUL BREUDER

15 MARK BRUH

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6 DEBORAH FRANKE  
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13 RICHARD D. GROSSMAN  
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16 KIRILL KHAN  
17 BRIAN P. KARPUK  
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19 TANZILA ZOMO  
20 HEIN VAN DER WIELEN  
21 DREW DUFFY  
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23 UDAY GORREPATI  
24 TAYLOR HARRISON  
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4 VINCE SULLIVAN  
5 ALEX WITTENBERG  
6 SARAH WYNN  
7 ZACHARY SABIB  
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9 MITCHELL HURLEY

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1 P R O C E E D I N G S

2 CLERK: All rise.

3 AUTOMATED VOICE: Recording in progress.

4 THE COURT: Please be seated. Mr. Koenig, good  
5 afternoon.

6 MR. KOENIG: Good afternoon, Your Honor. For the  
7 record, Chris Koenig, Kirkland & Ellis, for Celsius. Your  
8 Honor, before getting into our formal agenda today, I wanted  
9 to just give you a brief update on the status of plan  
10 distributions, hopefully a little bit shorter than the last  
11 time, and the a lawyer for Stretto intends to provide an  
12 update on the data security incident that was detailed in  
13 the notice that we posted on the docket about two weeks ago.

14 So first, getting started on plan distributions,  
15 we filed a few slides last night. Deanna, could you please  
16 make Amila Golic, A-M-I-L-A, the co-presenter so that she  
17 can put the slides up?

18 CLERK: Yes. Give me one moment.

19 MR. KOENIG: Thank you. So, what we did, Your  
20 Honor, is we filed some slides that -- it's the same slides  
21 we put up at the last hearing in March. We just sort of  
22 redlined them so you could see the progress that we've made.  
23 We've refreshed them for the progress that we've made in the  
24 last six weeks or so. I'll just wait for the slides.

25 CLERK: Yeah, she's a co-host.



1 MR. KOENIG: Thank you. Great. So, this is a  
2 redline version of the slides that we presented last  
3 hearing. So, as you can see, we've made quite a bit of  
4 progress, especially on the PayPal side of things and the  
5 fiat side of things. So, for PayPal, Venmo, we distributed  
6 approximately 86 percent of the value as of March. We've  
7 got hale the way between 86 and 100, got all the way to 93  
8 percent.

9 We are confident that -- as a reminder, Your  
10 Honor, there's claim codes that are sent out to people.  
11 There were some people in the last hearing who had been  
12 having problems with claim codes. We've been working  
13 through that process, canceling old codes, sending new  
14 codes, and we're pretty confident that we've got it figured  
15 out, as you can see in the table.

16 For the USD distributions at the bottom, the fiat  
17 distributions using Stretto, that was the part at the last  
18 hearing detail, we were maybe a little bit behind there  
19 because we had a banking partner issue. Now that we're up  
20 and running, you see a lot of progress there, going all the  
21 way from 18 percent to 46 percent. That's a very manual  
22 process, checks, wires, and the like. And we have obviously  
23 still a ways to go, but that process is well under way.

24 Two, with Coinbase, the flat percentage remains at  
25 83 percent but that's a little bit misleading because we've

1 distributed \$70 million more. It's just that the amount  
2 that was eligible for Coinbase also increased by about \$80  
3 million, so due to luck, I guess, the number stayed exactly  
4 the same, but we've actually distributed \$80 million more.

5 So, we're now at 86 percent of total value under  
6 the plan distributed and 89 percent of crypto, and again,  
7 keeping in mind the number of eligible claims went up during  
8 this period as well. So, it's -- that probably understates  
9 some of the progress. So, unless Your Honor has more  
10 specific questions for me on distributions, that was all I  
11 had on that matter.

12 THE COURT: I guess this really relates to the  
13 breach and Stretto. Have distributions resumed again?

14 MR. KOENIG: They have not. That was what I was  
15 going to turn to.

16 THE COURT: Okay, I'll wait. Go ahead.

17 MR. KOENIG: I expect that we're going to be able  
18 to get there this week. Your Honor, safety and security of  
19 assets have been at the forefront. I've stood here and  
20 talked to you about this many times and phishing scams and  
21 things of that nature. The moment we heard about this from  
22 Stretto, we immediately pause plan distributions because we  
23 needed to understand whether the systems were safe and  
24 secure to reopen distributions.

25 So far, somebody from Stretto will appear and

1 provide a more detailed summary, but we have found no  
2 evidence that any distributions were rerouted, stolen,  
3 anything of that nature. We're comfortable that that's --  
4 that that has not affected the distributions at all.

5 We're simply kicking the tires. We've been  
6 speaking to Stretto and investigators every day to try to,  
7 you know, make sure that we're doing our diligence and  
8 making absolutely certain that the system is safe and secure  
9 to resume distributions. We expect -- I'm cautiously  
10 optimistic that in the next week, we're going to have  
11 completed our review of their investigation and then we can  
12 reopen distributions and we'll be back -- we'll be back to  
13 business, as it were.

14 THE COURT: Okay.

15 MR. KOENIG: But unless you have any further  
16 questions for me, I'll cede the lectern. Joe McNelis from  
17 McDonald Hopkins represents Stretto and he wanted to briefly  
18 address the Court.

19 THE COURT: Thanks very much, Mr. Koenig.

20 MR. KOENIG: Thank you.

21 CLERK: I'm sorry, Judge, we never raised him on  
22 Zoom.

23 THE COURT: No, not yet.

24 CLERK: Okay.

25 MR. McNELIS: this is Joseph McNelis from McDonald

1 Hopkins on behalf of Stretto. Good afternoon, Your Honor.

2 THE COURT: Good afternoon.

3 MR. McNELIS: May I be heard?

4 THE COURT: Yes, please. Go ahead.

5 MR. McNELIS: Thank you, Your Honor. So, on the  
6 morning of April 17th, Stretto discovered some suspicious  
7 activity related to a single employee account. They  
8 immediately initiated an internal investigation which  
9 determined that there had been unauthorized access to that  
10 account.

11 In response to that discovery, Stretto disabled  
12 all access to that account to its internal systems as well  
13 as to any external or cloud-based software applications that  
14 they use related to its claims management services.  
15 Thereafter, Stretto retained external privacy counsel, our  
16 firm, McDonald Hopkins, as well as a forensic investigation  
17 firm to assist with the investigation, and that's been in  
18 progress around the clock until today.

19 At this time, I can say that the forensic  
20 investigation itself has concluded. We are awaiting a final  
21 executive summary from the forensic investigation firm, but  
22 I am able to share some -- the findings of that  
23 investigation as it relates to Celsius and these  
24 proceedings. The investigation found that there was a  
25 single employee account that was accessed as a result of a

1 smishing attack which is essentially a phishing attack which  
2 is done via text message, as opposed to email.

3 The first known access was on April 16th. It was  
4 discovered by Stretto on April 17th and was terminated at  
5 that time. The investigation did confirm that there is no  
6 additional unauthorized access from this account after April  
7 17th.

8 THE COURT: May I ask this question? How many --

9 MR. McNELIS: Sure.

10 THE COURT: On how many occasions was the account  
11 accessed before it was shut down?

12 MR. McNELIS: So, in terms of the email account,  
13 so the initial access, Your Honor, was via email. And then  
14 the threat actor was able to --

15 THE COURT: I thought --

16 MR. McNELIS: -- access --

17 THE COURT: I though you said it was by text.

18 MR. McNELIS: So, the initial communication came  
19 in via text and then in response to the text, the employee  
20 provided his credentials, thinking that it was a legitimate  
21 request for his credentials, and then once the threat actor,  
22 I'll call them, once the threat actor had credentials, they  
23 first accessed the employee's email account.

24 THE COURT: Were you able to track the access, the  
25 extent of the access that occurred once the access was

1 gained?

2 MR. McNELIS: Yes. So, I guess to your first  
3 question, we do know that it was only this one email account  
4 that was accessed. The investigation did include a review  
5 of the entire email environment and did not find  
6 unauthorized logins or any activity connected to the same IP  
7 addresses that were used. So, we can say with confidence  
8 that it was just the single employee email account.

9 In addition to the email account, there was  
10 evidence that the threat actor was able to access what's  
11 called the Stretto CORE software application. And just to  
12 be clear, this is not CORE as in the adjective core as in  
13 critical or kind of the main software. This is just -- CORE  
14 is the name of a software program that Stretto uses for  
15 certain claims management functions.

16 THE COURT: Does it leave a trail once someone  
17 gains access to it?

18 MR. McNELIS: Yes, Your Honor. So, that -- yeah,  
19 part of the investigation was once the forensic investigator  
20 was engaged, they worked with the Stretto IT team to pull  
21 what we call logs and other forensic evidence that was left,  
22 sort of a trail that would have been left by the threat  
23 actor showing where they went within each part of, you know  
24 -- within each of these applications and then what files or  
25 folders they may have touched when they were -- in the when

1 they were in those systems. I can say that there was no --  
2 there is no evidence that outside of the email access, there  
3 was no evidence to access to internal Stretto systems. So  
4 it was just to the email account.

5 There was a brief period where the threat actor  
6 was able to access the Amazon Web Services console which  
7 does have some cloud-based applications used by Stretto, but  
8 the investigation also found that essentially the threat  
9 actor was doing reconnaissance and there was no access to  
10 any data stored there. The access to data really occurred  
11 in that CORE software application and in terms of what data  
12 was accessed, there -- as I think was laid out briefly in  
13 the notice that was filed by Celsius, there was evidence of  
14 access to certain information from claims forms.

15 With regard to 99.9 percent of those individuals,  
16 the information that was accessed was really limited to just  
17 name and contact information. There was no evidence that  
18 any claim codes were accessed or even could have been  
19 accessed by this account, just because of where they were  
20 stored and the permissions granted to this account would not  
21 have allowed him to access those claim codes.

22 THE COURT: So, with respect -- stop. With  
23 respect --

24 MR. McNELIS: Sure.

25 THE COURT: -- the account holders and any email

1 addresses for them, were those account holders contacted by  
2 Stretto to advise that their specific -- that some of their  
3 specific information had been accessed?

4 MR. McNELIS: So, we are in the process of  
5 preparing those communications. I expect --

6 THE COURT: What are you waiting for? What are --

7 MR. McNELIS: We --

8 THE COURT: -- you waiting for?

9 MR. McNELIS: We are just dealing with some  
10 logistics in terms of getting email addresses and mailing  
11 addresses for those individuals.

12 THE COURT: How long ago did this occur? I don't  
13 understand why it's taking so long. The notice was filed on  
14 April 26th. It should have been the highest priority to  
15 notify each and every account holder. You've identified the  
16 account holders, correct?

17 MR. McNELIS: Yes. At this point, we have.

18 THE COURT: And I don't understand, then, why you  
19 haven't contacted the account holders to advise each account  
20 holder that their account was accessed improperly. Here we  
21 are at May 7th, and the notice was filed on April 26th.  
22 What are you waiting for?

23 MR. McNELIS: So, the notice that was filed by  
24 Celsius on the docket was, you know, at least one way to try  
25 to alert creditors that this had occurred. Typically,



1 investigations like this can, you know, sometimes take  
2 months to try to determine exactly whose information may  
3 have been accessed.

4 THE COURT: When did you identify whose  
5 information had been accessed?

6 MR. McNELIS: Probably May 1st or 2nd, Your Honor.

7 THE COURT: Have you communicated with the Office  
8 of the United States Trustee about the details of what  
9 transpired and what's been done since?

10 MR. McNELIS: No, Your Honor. At this time, the  
11 communications, at least as it relates to these proceedings,  
12 have been directly with Celsius.

13 THE COURT: All right. Mister --

14 MR. McNELIS: -- and then there's --

15 THE COURT: Mr. Masumoto, from the U.S. Trustee's  
16 office?

17 MR. MASUMOTO: Brian Masumoto for the Office of  
18 the United States Trustee. I did want to advise the Court  
19 that our office became aware of the Stretto incident and  
20 conveyed that information to the U.S. Attorney's Office.

21 THE COURT: Okay. But I -- here's my concern.  
22 Okay? The notice was filed -- of the security incident was  
23 filed on April 26th. You know that specific account  
24 holders' accounts were accessed. You know, unless somebody  
25 reads the docket on a regular basis, they probably have no

1 clue what's happened. I consider this to be absolutely the  
2 highest priority and inexcusable that the account holders  
3 haven't been contacted.

4 MR. McNELIS: I understand and if I could --

5 THE COURT: Stop.

6 MR. McNELIS: -- raise --

7 THE COURT: Stop.

8 MR. McNELIS: Sorry. Sure.

9 THE COURT: I don't want to go into this further  
10 on the record now. Mr. Masumoto, you or your colleagues  
11 should be in touch with Stretto's counsel and I just -- it's  
12 unacceptable to me that they haven't been -- that account  
13 holders haven't been contacted.

14 MR. MASUMOTO: We will follow up, Your Honor.

15 THE COURT: It's absolutely invisible to them  
16 unless -- you know, most creditors don't read the docket.  
17 When is the report going to be available? I want to see the  
18 report. The U.S. Trustee should see the report. I'm sure  
19 the Debtor and the Creditors Committee counsel should see  
20 the report as well. I want it as soon as possible.

21 MR. McNELIS: Understood. And can I just be heard  
22 on one point of clarification, Your Honor?

23 THE COURT: Go ahead.

24 MR. McNELIS: I don't want the Court to come away  
25 with the thought that accounts of creditors have been

1 accessed in any way. They were simply claim -- I mean, not  
2 to downplay it, because it's obviously important and  
3 sensitive information, but there was no account information,  
4 no credentials, no evidence of any claim codes or wire  
5 information. There were records within a Stretto software  
6 application --

7 THE COURT: Are you suggesting to me that the  
8 account holders don't have a right to know that their  
9 account was accessed?

10 MR. McNELIS: No. I'm suggesting that their --  
11 their account was not accessed. It was their personal  
12 information. So --

13 THE COURT: You don't think they have a right to  
14 know that their personal information was accessed through a  
15 phishing attack?

16 MR. McNELIS: Of course, I do, Your Honor.

17 THE COURT: Okay. Where are you located?

18 CLERK: (indiscernible).

19 MR. McNELIS: I am (indiscernible) South Carolina,  
20 but I live outside of Philadelphia and that's where I  
21 practice.

22 THE COURT: Tell me when the reports are going to  
23 be -- when the report is going to be completed.

24 MR. McNELIS: By Thursday, Your Honor.

25 THE COURT: I'm scheduling another hearing just to

1 deal with the Stretto security incident, to use the title  
2 that's on your notice, for next Tuesday, May 14th at three  
3 o'clock. You need to be in courtroom. I expect to have the  
4 report by Monday at noon and the U.S. Trustee, the Debtor,  
5 and the Committee will have it as well.

6 It's unacceptable to me. It's unacceptable to me  
7 that this wasn't absolutely the highest priority to get this  
8 done to have distributions resumed. Distributions have been  
9 frozen while this has been going on. The Court is contacted  
10 regularly by creditors wanting to know what's happened to  
11 their distributions. So, you be in the courtroom along with  
12 somebody, a responsible executive from Stretto.

13 MR. McNELIS: Yes, Your Honor. And I do want to  
14 assure you that this has been a priority for Stretto and for  
15 the members of our team that are working on this.

16 THE COURT: I want to make sure I get an  
17 explanation on Tuesday when you show up why it's taken this  
18 long.

19 MR. McNELIS: Yes, Your Honor. And --

20 THE COURT: Okay. Let's go on to the next --

21 MR. McNELIS: Okay. Understood.

22 THE COURT: -- item on the agenda.

23 MR. KOENIG: Thank you, Your Honor. The next item  
24 on the agenda, I believe, is Mr. Voelker's motion that he  
25 filed. Unfortunately, Your Honor, I have a day hearing --

1 THE COURT: Go ahead. Go ahead. That's fine. Go  
2 ahead.

3 CLERK: Sorry, Judge. We have a raised hand. I  
4 don't know if you want to address anything.

5 THE COURT: I want to address the next motion.  
6 All right. The next matter on the agenda is the motion for  
7 leave to file an adversary proceeding by Jason Voelker. Mr.  
8 Voelker --

9 MR. VOELKER: Good morning, Your Honor.

10 THE COURT: -- are you in the court -- you're on  
11 the screen. Go ahead, Mr. Voelker.

12 MR. VOELKER: I'm on -- I am on Zoom. Good  
13 morning. Sorry about that. It's afternoon there. I'm in  
14 California, so --

15 THE COURT: Okay. Go ahead.

16 MR. VOELKER: So, the motion that I filed, I think  
17 it pretty much speaks for itself. I was hoping for a  
18 response from Celsius and their counsel to where we could  
19 kind of, you know, flesh out the facts and, you know, kind  
20 of narrow the scope of the issues here, but it's kind of  
21 wide open. With regards to their particular argument that  
22 iCapital and myself are barred from proceeding because of  
23 the injunction and the class settlement, I think that that  
24 would be -- I believe that's true with regards to Earn  
25 account, but with regards to the money that we had in a

1 separate escrow account that's outside the bankruptcy  
2 estate, I think that's a separate matter that would have to  
3 be brought through an adversary proceeding.

4 And I see the injunction as being one that would  
5 bar us if those monies were actually in the bankruptcy  
6 estate, but they never made it there. They collaterally  
7 outside of the estate, but they're included within this  
8 bankruptcy. And that was kind of this conversation I  
9 thought we were going to be having, but counsel basically  
10 didn't address anything. They didn't address the Wyoming  
11 law with regards to cryptocurrency assets.

12 They didn't address jurisdiction. They didn't  
13 address the difference between having their escrow account  
14 out of Wyoming and the regular Earn account. Counsel didn't  
15 mention the word Wyoming at all, so I'm kind of at a loss of  
16 how the Court wants to proceed, but I do want to answer any  
17 questions or if anything came up.

18 THE COURT: Well, I read your papers and I'll give  
19 you a chance to make any other argument you want to do now.

20 MR. VOELKER: Well, the only other argument I  
21 would have -- well, I really don't have any other argument.  
22 There's nothing really new to add to this, Your Honor. I  
23 think that it's pretty straightforward that what we have is  
24 we have a classic bailment under Wyoming law. I understand  
25 that the Court in the past has ruled that the cryptocurrency

1       itself, that there's no security interest in it, but that's  
2       not with regard to the State of Wyoming. The State of  
3       Wyoming makes it very clear that there is a security  
4       interest and you can perfect that security interest simply  
5       by transacting. There's no need to go and follow UCC1 or  
6       any other type of security statement. Just transacting  
7       alone is enough to create a security interest.

8               THE COURT: Okay. Anything else you want to add?

9               MR. VOELKER: No, Your Honor.

10              THE COURT: Okay. So, an -- objections were filed  
11       by the litigation administrator. Who wants to argue -- go  
12       ahead.

13              MS. YOO: Good afternoon, Your Honor. Jade Yoo  
14       from White & Case on behalf of the litigation administrator  
15       and Ionic Digital.

16              THE COURT: Okay.

17              MS. YOO: I'll be addressing Mr. Voelker's motion  
18       today.

19              THE COURT: Go ahead.

20              MS. YOO: Before I begin, we have the declaration  
21       of Mr. Brian Karpuk from Stretto, which is attached to our  
22       objection. I'd like to submit that into evidence. Mr.  
23       Karpuk is also available by Zoom today for any questions  
24       related to his declaration.

25              THE COURT: What's the ECF number of the

1 declaration?

2 MS. YOO: The -- that would be 4843.

3 THE COURT: 4843-1.

4 MS. YOO: Actually, I believe it's attached  
5 directly to the objection, so no dash one.

6 THE COURT: I think it had a dash one.

7 MS. YOO: Oh, my apologies, Your Honor. You're  
8 correct. 4843-1.

9 THE COURT: All right. Any objection? All right,  
10 the Karpuk declaration is admitted into evidence.

11 (ECF 4843-1 entered into evidence)

12 MS. YOO: Thank you, Your Honor. Turning now  
13 (indiscernible) substance of Mr. Voelker's motion, as argued  
14 in our objection, the issue before the Court today is more  
15 of a gating issue, that is whether the Court should grant  
16 Mr. Voelker, a nominal plaintiff, leave to file a derivative  
17 complaint seeking return of cryptocurrency assets that  
18 iCapital deposited with Celsius as part of Celsius' Earn  
19 program and Borrow program. And the answer, Your Honor, is  
20 no for two reasons.

21 First, the plan says what the plan says. No  
22 matter how Mr. Voelker tries to slice and dice iCapital's  
23 reported claims, they were settled, they were released,  
24 expunged, and are now permanently enjoined pursuant to the  
25 terms of the plan and Your Honor's confirmation order.



1           Second, Mr. Voelker's request just simply comes  
2           too late and he cannot seek refuge under the doctrine of  
3           equitable tolling to save his untimely request. On the  
4           first point, Your Honor, the plan says what the plan says  
5           and what the plan says is that iCapital which did not  
6           affirmatively opt out of the class claim settlement, settled  
7           and released all prepetition claims and causes of action  
8           underlying its proof of claim, and that proof of claim is  
9           now expunged.

10           The following facts are uncontested. During the  
11           solicitation process for the plan, iCapital was served the  
12           solicitation materials which included a ballot and a notice  
13           regarding the class claim settlement. iCapital did not  
14           return a ballot. It did not opt out of the class claim  
15           settlement, and it is now bound by the terms of that  
16           settlement.

17           And in exchange, as Your Honor is aware, iCapital  
18           became entitled to a 5 percent premium on the scheduled  
19           amount of its scheduled claim and will receive distributions  
20           under the plan consistent with that entitlement. In fact,  
21           iCapital has already received an initial distribution and  
22           the injunction provision of the plan which is now effective  
23           permanently enjoins both iCapital and Mr. Voelker from  
24           commencing actions based on such settled, released, and  
25           expunged claims.

1 Mr. Voelker does not contest that iCapital is a  
2 class claim settlement participant or that the injunction  
3 provision is inappropriate. Indeed, as you see in his reply  
4 in support of his motion which he filed yesterday and as he  
5 stated today on the record, Mr. Voelker seems to concede  
6 that conjunction provisions of the plan do bar general Earn  
7 claims.

8 Instead, what he seems to argue is that iCap --  
9 that the assets iCapital deposited as a retail borrower in  
10 connection with the Borrow program are somehow distinct and  
11 are not property of the estates. The distinction Mr.  
12 Voelker tries to draw is completely contrary to the terms of  
13 the class claims settlement which encompasses both general  
14 Earn claims and retail Borrower deposit claims.

15 And critically, Your Honor, the Court has already  
16 found that the cryptocurrency transferred by users to  
17 participate in the Borrow program with respect to those  
18 users who did not vote to accept the plan is property of the  
19 Debtor's estate under Section 541 of the Bankruptcy Code.  
20 And this is in Your Honor's confirmation order, Paragraph  
21 269.

22 As mentioned earlier, iCapital received a ballot  
23 but did not return it, and thus it never voted to accept the  
24 plan. Your Honor's confirmation order therefore applies  
25 with full force. The cryptocurrency iCapital pledged as

1 collateral is properly considered part of the Debtors'  
2 estates and Mr. Voelker cannot seek their return. Simply --

3 THE COURT: What about his argument that state law  
4 made it into a secured creditor?

5 MS. YOO: Well, the time to have made that  
6 argument, Your Honor, is simply passed and that's the second  
7 point that I'd like to raise. To be clear, Your Honor, we  
8 do not believe that the application of equitable tolling is  
9 apt here and even if it is, the circumstances do not warrant  
10 the application of equitable tolling. Mr. Voelker admits in  
11 his -- in both his motion and his reply that the relief that  
12 he seeks is untimely, and what he does is appeal to the  
13 doctrine of equitable tolling.

14 As an initial matter, Your Honor, application of  
15 equitable tolling would be prejudicial to the Debtors at  
16 this point in time. The confirmation order became final and  
17 non-appealable on November 23rd of 2023. The Debtors have  
18 since emerged from Chapter 11 and commenced distributions to  
19 creditors pursuant to the plan, as Your Honor has heard this  
20 morning, and iCapital has already received an initial  
21 distribution based on its entitlement under the plan.

22 Granting Mr. Voelker's motion at this point would  
23 open the door to costly litigation that the plan already  
24 operates to foreclose and would disrupt the orderly  
25 administration of the effective plan. And in any event,

1 Your Honor, finally, Mr. Voelker's equitable argument fails.  
2 Mr. Voelker bears the burden of satisfying two elements for  
3 the application of equitable tolling. One is that he  
4 diligently pursued his rights; and two, that there were  
5 extraordinary circumstances beyond his control that  
6 prevented timely filing. He has not met his burden on  
7 either element.

8 This Court can quickly dispose of the notion that  
9 Mr. Voelker or iCapital have been prevented from asserting  
10 their rights in these Chapter 11 cases whether that's an  
11 extraordinary way or even an ordinary way. Nowhere in his  
12 reply brief or his opening brief does Mr. Voelker make any  
13 such allegations.

14 As for his personal diligence, all Mr. Voelker  
15 said he's done is to encourage iCapital's board of directors  
16 to pursue legal action. According to his papers, this  
17 request was made as early as May of 2022 which is now almost  
18 two years ago. He provides simply no other detail or  
19 explanation for what caused the delay on his part to obtain  
20 consent for derivatives -- excuse me, derivative standing.

21 More importantly, Your Honor, iCapital has had  
22 multiple opportunities to exercise its rights or otherwise  
23 preserve its claims against Celsius. As Your Honor noted,  
24 they could have brought up the Wyoming law issue at any  
25 point during the Chapter 11 cases and they did not.

1 iCapital could have opted out of the class claim settlement.  
2 It did not. iCapital could have objected to the plan or  
3 appealed your confirmation order. It did not.

4 Under these facts, there is simply no basis to  
5 apply equitable tolling, and for these reasons, Your Honor,  
6 we ask that you deny the motion.

7 THE COURT: Thank you very much. All right. Mr.  
8 Voelker, do you wish --

9 MR. VOELKER: Yes, that's -- yes. Thank you, Your  
10 Honor. (indiscernible) it sounded a lot like the  
11 opposition, I didn't really hear anything new to that and  
12 the reply addressed much of that. As far as why did  
13 iCapital not bring anything previously and somehow that  
14 precludes relief, I mean, that's kind of the point. Counsel  
15 makes the point, is that it wasn't able to proceed. It  
16 didn't have counsel. It didn't have representation. It  
17 wasn't able to proceed.

18 That's why I came in as a shareholder derivative  
19 and -- but I couldn't come a day earlier. Under 23.1 of the  
20 Federal Rules of Civil Procedure, it's very clear that had I  
21 come any earlier with these claims, I would have been barred.  
22 Unfortunately, when I had standing, it was already too late,  
23 and that's precisely what equitable tolling is for, other  
24 equitable relief. Because if the day I'm able to come to  
25 Court, I'm already barred and I come to Court with clean

1 hands, there's something wrong. I should be able to come to  
2 Court with clean hands and have my day in Court. And if  
3 that is something that's barred, that's what exactly  
4 equitable tolling is for.

5 As far as the claim that, you know, that this was  
6 just part of the regular Earn account or part of the Borrow  
7 account, that that's not the case. If you can look  
8 distinctively at the documents that we prepared out of  
9 Wyoming, it says it would be an escrow account. We  
10 submitted our board resolution. We submitted our bylaws.  
11 The (indiscernible) finance agreement said it was out of  
12 Wyoming and it's very clear that this is an agreement and it  
13 was put together for the purposes of trying to maintain a  
14 security interest in this cryptocurrency.

15 And as far as I can see, I don't see anywhere  
16 where that cryptocurrency has been deposited into the actual  
17 estate. I don't know if it's outside of the estate, if it  
18 was transferred in there separately under a different  
19 heading. When I look at iCapital's information in the  
20 schedules, I'm not seeing it. So, when counsel says, well,  
21 there's already disbursements coming, I'm not seeing it. I  
22 saw a \$3,000 disbursement check from part of the Earn  
23 account, but that's not what we're talking about. We're  
24 talking about the money held in this distinct escrow that is  
25 part of a bailment under Wyoming law and I think the Court

1 has to take that into consideration.

2 And when counsel says, oh, this is going contrary  
3 to the Court's rules, I don't believe so. I think that the  
4 Court has not taken a look at it from this angle, and when  
5 it sees that Wyoming law incorporated it into the  
6 (indiscernible) changes things.

7 THE COURT: All right. Thank you very much, Mr.  
8 Voelker. I'm going to take it under submission and I'll  
9 enter an order appropriately.

10 MR. PHILLIPS: Your Honor, may I be heard on this  
11 matter?

12 THE COURT: No, you may not. You have not filed  
13 anything, Mr. Phillips. You're not a party to this dispute.  
14 You cannot be heard. All right. Next item on the agenda is  
15 request for judicial review of UCC matter by Mr. Noyes. Mr.  
16 Noyes, do you want to be heard?

17 MR. NOYES: Yes. Yes, please, Your Honor.

18 THE COURT: Go ahead.

19 MR. NOYES: Okay, with your permission, I would  
20 like to briefly lay out how I came to be part of the UCC,  
21 the events that led to the United States Trustee to  
22 (indiscernible) manner and why I think those allegations  
23 were spurious.

24 So, I first became involved with Celsius  
25 bankruptcy case in July 2022, while I was employed as Chief

1 Risk and Compliance Officer for Covario AG, a Swiss crypto  
2 brokerage firm. I should add here that I worked in  
3 financial markets for approximately 30 years. I'm not a  
4 lawyer and have never studied law.

5 Covario AG had several clients who had deposited  
6 crypto assets with Celsius through the Earn (audio glitch)  
7 program. Because the assets were deposited through Covario  
8 account with Celsius, Covario ended up being a very large  
9 institutional creditor. (audio glitch) I completed the  
10 application form for Covario to join Unsecured Creditors  
11 Committee and I also disclosed that I was personally at  
12 creditor of Celsius in the August 2, 2022 disclosure  
13 statement for Covario.

14 After Covario was selected by the U.S. Trustee to  
15 join the UCC, I was tasked with being the Covario  
16 representative on UCC, a role I fulfilled from the end of  
17 July 2022 until September 29, 2023 when Covario was removed  
18 from the UCC, and by extension myself. Let me be clear up  
19 front that I do challenge the authority of the U.S. Trustee  
20 to select, substitute, and remove members of the UCC. What  
21 I do challenge is spurious allegation by the U.S. Trustee  
22 that I acted in an ultra vires manner at the time Covario  
23 (indiscernible).

24 Despite no evidence backing the accusation, the  
25 U.S. Trustee also insisted that my name be removed from the



1 litigation oversight committee to which I had been selected  
2 in my personal capacity by the whole UCC. The first  
3 allegation by the UCC that I acted in an ultra vires manner  
4 have had tremendous personal economic and professional  
5 impact on my life. I explain now why the accusation is  
6 false and how the U.S. Trustee acted negligently in making  
7 these accusations.

8 As the Covario representative on UCC, I was from  
9 the outset extremely engaged in all UCC matters. Due to  
10 time zone differences, this frequently involved working well  
11 into the night as well as on weekends and European holidays.  
12 In terms of participation time and effort, I estimate that  
13 only the committee co-chairs dedicated more time and effort  
14 to the UCC than I did.

15 On November 25, 2022, Covario failed to make  
16 payroll and it became clear that bankruptcy was near. Not  
17 being familiar with U.S. bankruptcy law regarding whether or  
18 not a bankrupt company could continue to be a UCC committee  
19 member, I sought the advice of Greg Pesce of White & Case,  
20 the UCC counsel. As the evidence provided by the U.S.  
21 Trustee's March 13th and May 1, 2023 filings, the latter of  
22 which is in Docket 4850, Mr. Pesce first flagged Covario's  
23 potential bankruptcy to the U.S. Trustee in late November,  
24 early December 2022.

25 This was the first of three instances where I

1 expressed concern that Covario bankruptcy could make it  
2 impossible for me to represent Covario on USS and asked  
3 whether I should resign if that were the case. To be clear,  
4 what I mean by that is whether I should resign from my  
5 position on the UCC, not to resign (indiscernible) Covario's  
6 position on the UCC. As the evidence shows, U.S. Trustee  
7 did not (audio glitch) conclusions until an actual  
8 bankruptcy occurred and this is understandable.

9 On December 20, 2022, Covario filed for bankruptcy  
10 in Zug, Switzerland. The filing was for a winddown akin to  
11 a U.S. Chapter 11 rather than a restructuring. On that same  
12 day, Covario's CEO Mark Banner circulated two emails to  
13 Covario staff (audio glitch) Exhibits 2 and 3 (audio glitch)  
14 in Docket (audio glitch) requesting review. In the first  
15 email, staff were advised to collect personal belongings on  
16 that day and that access to Covario email would be shut off  
17 imminently.

18 The second advised (indiscernible) employment  
19 would be up to the Swiss bankruptcy administrator. To this  
20 day -- meaning today -- the Swiss bankruptcy administrator  
21 has never instructed me to discontinue representing Covario  
22 AG on the UCC. (indiscernible), Mr. Pesce again reached out  
23 to the U.S. Trustee on December 21, 2022 to inform the U.S.  
24 Trustee that Covario had indeed gone bankrupt, and I again  
25 asked for guidance on whether I could continue to represent

1 Covario in the UCC.

2 At the same time, Mr. Pesce submitted on my behalf  
3 an application to join the UCC in my own capacity. The  
4 purpose of this application was to give U.S. Trustee option  
5 should it choose to remove Covario from the UCC that it  
6 could substitute me instead in order to preserve maximum  
7 continuity and institutional memory. I fully understood  
8 that I could not join the UCC in my personal capacity until  
9 or unless the U.S. Trustee chose to review -- remove Covario  
10 and select me.

11 With Covario email being shut off, Mr. Pesce and I  
12 agreed that from that day forward, UCC committee  
13 (indiscernible) would be sent to a personal email address  
14 that I created for this purpose so that I could continue to  
15 represent Covario on the UCC to perform my fiduciary duties.

16 When I returned (indiscernible) in early January,  
17 I found in my letterbox official notice of the Covario  
18 bankruptcy which I officially -- which I immediately  
19 forwarded to Mr. Pesce. Again, I inquired if the U.S.  
20 Trustee had reached any decision (indiscernible) for me to  
21 resign from UCC. Mr. Pesce responded that he had spoken  
22 with the U.S. Trustee the previous day, January 4th, '23,  
23 and that the U.S. Trustees were taking matters under  
24 consideration and Mr. Pesce advised that I should continue  
25 performing my UCC duties as before.

1 For the next nine months, I continued to do just  
2 that, representing Covario on the UCC and assisting  
3 Covario's end clients with Celsius exposure questions where  
4 I could. Though my demonstrated efforts and abilities, the  
5 UCC found it (indiscernible) select me around the end of  
6 August or beginning of September 2023 to serve on the  
7 Litigation Oversight Committee.

8 In approximately mid-September 2023, I was alerted  
9 for the first time by Mr. Pesce that the U.S. Trustee was  
10 raising questions about my capacity to serve on UCC.  
11 (indiscernible) I find the accusation made by the U.S.  
12 Trustee absurd and believe that they have been negligent  
13 (audio glitch) spurious allegation that I acted in  
14 (indiscernible) manner.

15 In the U.S. Trustee filing of March 13, 2023 --  
16 and I apologize. This was circulated through chambers, so I  
17 don't know the docket number -- the U.S. Trustee, and I  
18 quote, "Mr. Noyes (indiscernible) in the Noyes letter that  
19 as of December 20, 2022 he was no longer employed by the  
20 (indiscernible) on behalf of Covario, the committee member  
21 had been authorized -- he had been authorized in the  
22 committee."

23 Nothing could be further from (audio glitch). I  
24 continued to represent Covario because the Swiss bankruptcy  
25 administrator never instructed me not to continue

1 representing Covario. According to the U.S. Trustee filing  
2 of (indiscernible) Page 6, the U.S. Trustee (indiscernible)  
3 Mr. Pesce and expressly asked if there had been formal  
4 resignation and if so, what was the resignation date.

5 The (indiscernible) email sent (indiscernible) to  
6 Mr. Pesce on Thursday, September 14th, 2023 read, "Thank you  
7 for your email. Has there been a formal resignation yet?  
8 We cannot make any designation -- any decision of any action  
9 without a formal resignation. Additionally, as of what date  
10 will the resignation relate to? Can you provide the date  
11 for the insolvency proceedings abroad? Lastly, we were not  
12 aware of Keith's personal application for the committee.  
13 Thank you, Shara."

14 So, therefore the U.S. Trustee also proposed that  
15 there had never been an official resignation by Covario and  
16 this (indiscernible). I also find it incredibly interesting  
17 that (indiscernible) stated that she was not aware of  
18 Keith's personal application for (audio glitch), despite the  
19 U.S. Trustee's May 1, 2024 filing stating specifically at  
20 the bottom of Page 5 and the start of Page 6, also including  
21 the December 21 email was for the first time a copy of an  
22 individual application to join the committee from Mr. Noyes.

23 Based upon the scant evidence provided in the  
24 discovery by the U.S. Trustee, it appears that the first  
25 time that the U.S. Trustee attempted to contact Covario

1 following being made aware that Covario had declared  
2 bankruptcy on December 2022 was on September 19, 2023.

3 I apologize for the late delivery of discovery  
4 documents by -- made by the U.S. Trustee has made it  
5 impossible for me to submit these in the docket on a timely  
6 manner. Please allow me read from the email from which  
7 (indiscernible) which is addressed exclusively to several  
8 Covario email addresses, including the CEO and the former  
9 head of corporate communications who left Covario during  
10 summer of 2022, and I note that had been flagged that the  
11 email for Covario was shut off on December 21, 2022.

12 "To whom it may concern, my name is Shara Cornell  
13 and I am a trial attorney with the United States Trustee's  
14 program, a branch of the United States Department of  
15 Justice. Covario AG appointed to the Official Committee of  
16 the Unsecured Creditors Committee in bankruptcy case,  
17 Celsius Network LLC, 22-10964 pending in the Southern  
18 District of New York, United States of America, in August  
19 2022. At the time of appointment, Covario AG was  
20 (indiscernible) Keith Noyes as its representative committee.  
21 It has come to our attention that Keith Noyes is no longer  
22 affiliated with Covario AG. Can you please state Covario  
23 AG's intention with respect to the Committee and Celsius?  
24 If Covario AG no longer wishes to serve on the Committee,  
25 please let me know as soon as possible (indiscernible) at

1 your convenience to discuss further. Regards, Shara  
2 Cornell."

3 So again, I do not dispute the power of the U.S.  
4 Trustee to select, remove, or replace UCC members; however,  
5 I do challenge their right to case spurious allegations. I  
6 was clearly still the Covario representative on the UCC  
7 until September 29th, 2023 when the U.S. Trustee removed  
8 Covario and by extension myself. The allegations that I  
9 acted in an ultra vires manner has cause me significant  
10 injury.

11 Covario's insolvency has already cause me  
12 financial (audio glitch) and as a nearly 60 father trying to  
13 support a family consisting of a wife and two teenage  
14 daughters living in Switzerland, one of the most expensive  
15 places on earth, the U.S. Trustee, the allegation of acting  
16 in an ultra vires manner, having me removed from the  
17 litigation -- the people selected to serve on the Litigation  
18 Oversight Committee denying me a source -- a potential  
19 source of future income (indiscernible) answer questions  
20 about this ultra vires allegation in job interviews and this  
21 puts me at a competitive disadvantage when competing for  
22 jobs and puts (indiscernible) my resume the 13 months during  
23 which I served on the UCC.

24 For these reasons, I seek judicial finding that I  
25 did not act in an ultra vires manner as I hope has been duly

1 demonstrated here. I also seek a formal apology from the  
2 U.S. Trustee for the damage that they have done to my good  
3 name and (indiscernible) and I seek reinstatement in the  
4 Litigation Oversight Committee as originally (indiscernible)  
5 in the September 2022 confirmation plan, which is an Exhibit  
6 6 in my original filing. Thank you very much, Your Honor.

7 THE COURT: Thank you, Mr. Noyes. Who from the  
8 U.S. Trustee's Office is going to respond?

9 MS. HAVLIN: Your Honor, this is Kim Havlin for  
10 the Committee. We'd also like to be heard.

11 THE COURT: All right, let me hear from the  
12 Committee first, Mr. Masumoto, and then we'll hear from you,  
13 okay?

14 MS. HAVLIN: Of course, Your Honor. Thank you.

15 THE COURT: No, go ahead. I'll hear from the  
16 Committee first. Go ahead.

17 MS. HAVLIN: Thank you very much, Your Honor.  
18 Good afternoon. This is Kim Havlin of White & Case here on  
19 behalf of the Committee. I will be brief, but we do stand  
20 here first to defend the integrity of the Committee and its  
21 process, and we do agree with Mr. Noyes that he did not act  
22 in an ultra vires manner. And if I may pause on that, Your  
23 Honor, that is the narrow question that is before the Court  
24 today and a judicial determination --

25 THE COURT: It actually is not. That's the U.S.



1 Trustee position in their objection is that the matter is  
2 moot. And I don't reach advisory opinions. The matters  
3 before me now does not require -- my concern is, it does not  
4 require a finding one way or the other, whether anything  
5 done by Mr. Noyes was ultra vires.

6 MS. HAVLIN: We understand that concern, Your  
7 Honor, and with respect to that the Committee is in Your  
8 Honor's hands as to whether it wishes to hear the  
9 application.

10 THE COURT: Well, go ahead. (indiscernible).

11 MS. HAVLIN: Sure. Should the application  
12 proceed, I'm sure the United States Trustee and Mr. Noyes  
13 will address this issue, but just to go to the merits, we do  
14 agree that Mr. Noyes did not act in an ultra vires manner at  
15 any time and at least next to mootness question, that is  
16 narrow and legal, frankly, Your Honor, question here before  
17 the Court, a narrow question about legal authority to act  
18 that to be frank is a bit apart from a lot of the back and  
19 forth that you see in the emails and so forth, so there is -  
20 - there is no dispute that Covario was appointed to the  
21 Unsecured Creditors Committee and that Mr. Noyes was  
22 appointed as its representative.

23 I have two documents from the docket that I'd like  
24 to refer to, Your Honor, (indiscernible) enter into evidence  
25 just for --

1 THE COURT: So, just -- if it's on the docket, why  
2 don't you just give me the docket numbers.

3 MS. HAVLIN: Even better. So, the first document,  
4 Your Honor, is Docket No. 241. It was filed July 27, 2022.  
5 It is the notice of appointment of Official Committee of  
6 Unsecured Creditors. And it lists at number seven Keith  
7 Noyes for Covario AG.

8 The second document, Your Honor, is an amended  
9 notice of appointment of Official Committee of Unsecured  
10 Creditors that appears at Docket 3631. It was filed  
11 September 29, 2023. I have copies if anyone needs them.  
12 The amended notice no longer contains Covario or Mr. Noyes.

13 I raise these two document, Your Honor, because  
14 there really, as we see it, is only one question which is  
15 whether in this time period between the day that Covario and  
16 Mr. Noyes were appointed and the day that they were formally  
17 removed by the United States Trustee, was there any moment  
18 at which authority to conduct itself in accordance with this  
19 Court filed notice of appointment was revoked, destroyed, or  
20 otherwise changed. It's our submission that there is no  
21 evidence in the record whatsoever before you that Mr. Noyes'  
22 authority to act on behalf of Covario ever changed.

23 And I'll say, it's true that as Mr. Noyes  
24 described -- and you'll see this, Your Honor, in the papers  
25 -- that in November or December 2022, my partner Greg Pesce

1       advised the United States trustee of Covario's financial  
2       issues. It did so as he -- as I think it clear from the  
3       record if you take a look, in order to, you know, kind of  
4       plan ahead in case because who knew at that time, perhaps  
5       Covario decided to resign from the Committee, Covario  
6       decided to appoint someone to the Committee, the United  
7       States Trustee decided that Covario was no longer an  
8       appropriate Committee member, some combination of the above,  
9       or something different.

10               And as such, Mr. Pesce submitted the completed  
11       questionnaire of Mr. Noyes which was always there to serve  
12       as a backup option, should some removal or change occur.  
13       But our point to come back to is that none of these ever  
14       happened, Your Honor. Mr. Noyes was never removed and  
15       continued to serve as he had been authorized to do.

16               I do have two other documents which are emails  
17       from discovery that I'd like to offer in, Your Honor, if I  
18       may.

19               THE COURT: Just -- why don't you tell me what  
20       they are and see --

21               MS. HAVLIN: For sure. They've been circulated,  
22       Your Honor, to the --

23               THE COURT: Okay.

24               MS. HAVLIN: -- United States Trustee and to Mr.  
25       Noyes. They're documents from discovery. One of them, Your

1 Honor, is the email that Mr. Noyes referred to. It is an  
2 email from Ms. Shara Cornell of the United States Trustee's  
3 Office to the bankruptcy administrator for Covario's estate.  
4 It is dated September 19 of 2023. The other is an email  
5 exchange dated September 30th, 2023 between my partner Greg  
6 Pesce and the Covario bankruptcy administrator.

7 We're happy to put those on the docket, yes, Your  
8 Honor. My point is going to be more what those documents  
9 don't contain. There was an outreach from the United States  
10 Trustee to the bankruptcy administrator of Covario. There  
11 was an outreach from the Unsecured Creditors Committee to  
12 the bankruptcy administrators of Covario's estate. Neither  
13 one said, who is this Keith Noyes gentleman, he's not  
14 authorized to act, please correct this error, please resign.  
15 Please remove us.

16 So, even if you do engage in the discovery record,  
17 I submit, Your Honor, it strongly supports Mr. Noyes'  
18 contention and that he continued to have authority to serve.  
19 Your Honor, I'm happy to answer any other questions on the  
20 record. I don't intend to address the merits any further,  
21 other than, if I may, Mr. Noyes filed a reply just a few  
22 hours before. The last paragraph of Mr. Noyes' reply  
23 submission -- forgive me -- which appears at Docket 4870,  
24 the last paragraph of Mr. Noyes' reply requests that in the  
25 event that Your Honor makes a finding against Mr. Noyes,

1 that it doesn't just decline to --

2 THE COURT: I don't even think that's an issue for  
3 today. The issue is whether this is moot. I don't  
4 (indiscernible). I don't render advisory opinions.

5 MS. HAVLIN: Then I --

6 THE COURT: I don't see where -- I don't expect to  
7 be making any finding that Mr. Noyes acted in an ultra vires  
8 manner.

9 MS. HAVLIN: Thank you, Your Honor. I would just  
10 ask, should you consider that if we could brief the issue  
11 and address the request for modification of the order.

12 THE COURT: Thank you. Thank you very much.

13 MS. HAVLIN: Thank you.

14 THE COURT: Mr. Masumoto.

15 MR. MASUMOTO: Thank you, Your Honor. Brian  
16 Masumoto for the Office of the United States Trustee. Your  
17 Honor, give your statements, I'm not sure whether I should  
18 attempt to --

19 THE COURT: Let me ask you this. Do you agree  
20 with me that in order to rule on the pending motion, I do  
21 not need to make any finding that Mr. Noyes acted in an  
22 ultra vires manner?

23 MR. MASUMOTO: Our position is that, as indicated  
24 in our papers, that the matter is moot and that the issue of  
25 his ultra vires conduct or not, is not at issue.

1 THE COURT: All right.

2 MR. MASUMOTO: Your Honor, to -- given Your  
3 Honor's position and -- which seems to be consistent with  
4 ours, that the matter is moot, I would prefer not to  
5 necessarily go into details contradicting Mr. Noyes and/or  
6 Ms. Havlin. To the extent Your Honor has questions, I'm  
7 happy to address them. I would specifically address Your  
8 Honor to the application filed by Mr. Noyes himself  
9 regarding statements as to his representation on the  
10 Committee.

11 THE COURT: I don't have any questions.

12 MR. MASUMOTO: Thank you, Your Honor.

13 THE COURT: All right. I'm going to take it under  
14 submission.

15 MR. NOYES: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MS. HAVLIN: Thank you, Your Honor.

18 THE COURT: Thank you very much. All right.  
19 Let's move on on the agenda. On the uncontested matters,  
20 the motion to distribute deceased account holders' assets.  
21 It's ECF 4815.

22 MR. LATONA: Good afternoon, Your Honor. For the  
23 record, Dan Latona of Kirkland & Ellis for the post-  
24 effective date Debtors. You're correct, Your Honor. This  
25 is an uncontested motion, but briefly for some background,

1 prior to the pause back in June when the Debtors were  
2 releasing cryptocurrency assets to individuals purporting to  
3 be beneficiaries or representatives on account of deceased  
4 account holders, they had in place a process pursuant to  
5 which they would verify the individual's information.

6 Once the company paused distributions, the need  
7 for that ceased. But now that we recommenced distributions,  
8 this issue has arisen in a handful of number of  
9 circumstances and rather than seeking out local counsel in  
10 the relevant jurisdiction and verifying that information, we  
11 thought it made sense both from an administration  
12 perspective and from a cost perspective to have one central  
13 form where we have the implementer of a Court order.

14 And so, that's the background for the motion  
15 that's being presented today. So, very briefly, Your Honor,  
16 the motion seeks a set of procedures whereby an individual  
17 purporting to act as a beneficiary or representative on  
18 behalf of a deceased account holder would submit to KYC in  
19 their individual capacities. We would ensure that the  
20 deceased account holders' KYC is current and up to date.

21 We would need to see evidence that the individual  
22 was authorized to act on behalf of the deceased account  
23 holder, and lastly that the account holder was in fact  
24 deceased. That would be accompanied with a form that would  
25 include all this information and which documents to provide.

1 The Debtors would then send an email that's  
2 attached to the order as Exhibit B to the account email  
3 address on file and implement a 14-day waiting period. If  
4 no adverse response is received, then the distribution  
5 agents or the Debtors would be authorized to distribute the  
6 cryptocurrency assets as they see fit, pursuant to the plan.

7 And so again, Your Honor, there were no  
8 objections, no individual or the United States Trustee  
9 reached out, and so we would request entry of the order.

10 THE COURT: Thank you. Mr. Masumoto or Mr. Bruh,  
11 do you have any comments on this?

12 MR. MASUMOTO: No objection, Your Honor.

13 THE COURT: All right, it's granted.

14 MR. LATONA: Thank you, Your Honor.

15 THE COURT: Submit the order (indiscernible). The  
16 last matter on the calendar is the motion for  
17 reconsideration of substantial contribution by Ad Hoc Group  
18 of Earn Account Holders. I don't understand why this is  
19 listed as an adjourned matter. The matter was resolved in a  
20 memorandum opinion and order denying motion of the Ad Hoc  
21 Group of Earn Account Holder for reconsideration of the  
22 Court's substantial contribution opinion. It's filed as ECF  
23 Docket No. 4819. It was filed on April 19th, 2024. So, I  
24 believe it was erroneously listed as an adjourned matter.  
25 All right, that concludes the calendar for today. We're



1 adjourned.

2 MR. LATONA: Thank you, Your Honor.

3 MR. MASUMOTO: Thank you, Your Honor.

4 MS. HAVLIN: Thank you, Your Honor.

5 (Whereupon these proceedings were concluded at

6 3:01 PM)

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RULINGS

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account holders, granted	48	13

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: May 8, 2024